THAM KWEE SIN v. GAN KHAY BENG

[O.C.J. (Ajaib Singh J.) August 10, 1979]
[Seremban — Civil Suit No. 245 of 1975]

Landlord and Tenant — Rent-controlled premises — Certificate for decontrol of premises — Whether valid and effective — Control of Rent Act, 1966, s. 23.

In this case the premises originally belonged to the defendant. He let out the ground floor of the premises to his own company, Bee Chuan & Co. at the rent of $90 per month. The lease of the ground floor expired on December 31, 1971. Two weeks earlier the defendant sold the premises to the plaintiff, who subsequently gave a lease of the ground floor to the defendant for a period of four years with effect from January 1, 1972. On March 8, 1972 the plaintiff obtained a certificate from the Rent Tribunal under section 23 of the Control of Rent Act for the decontrol of the ground floor. In his application the plaintiff stated that the ground floor had been surrendered by the tenant, Bee Chuan & Co. Sdn. Bhd., to the former landlord. The copy of the certificate was served on Bee Chuan & Co. but not on the defendant. The plaintiff applied for possession of the premises on the ground of rent being in arrears. The defendant denied that there had been arrears of rent and claimed that the premises were controlled premises. The defendant also counter-claimed to recover the excess rent he had paid to the plaintiff.

Held: (1) the certificate of the Rent Tribunal was wrongly issued, as Bee Chuan & Co., who were named as the tenants were no longer tenants of the premises. There was nothing to show that the defendant had agreed to surrender his tenancy. Moreover the copy of the certificate was not served on the defendant;

(2) the ground floor of the premises therefore remained subject to the Control of Rent Act, 1966, so that the defendant could only be evicted in accordance with the provisions of the Control of Rent Act, 1966;

(3) the plaintiff's claim for possession must be dismissed and the plaintiff should refund the excess rent which the defendant had paid to her.

CIVIL SUIT.

Atma Singh Gill for the plaintiff.

R.R. Chelliah (*S. Periasamy* with him) for the defendant.

Cur. Adv. Vult.

Ajaib Singh J.: The plaintiff in this case sued the defendant for vacant possession of the ground floor of premises No. 46 Jalan Tunku Hassan and for arrears of rent. The plaintiff alleged that she had leased the ground floor of the premises to the defendant for a period of 4 years from January 1, 1972 to December 31, 1975 and the ground on which she was now claiming possession was that by reason of non-payment of rent the defendant had committed a breach of the terms of the lease giving rise to the forfeiture of the lease. On June 6, 1974 she served a notice on the defendant requiring him to pay up the arrears of rent and to give up vacant possession of the ground floor of the premises.

The defendant denied that he had been in arrears of rent. He contended that the ground floor of the premises was subject to the Control of Rent Act, 1966 and by way of counterclaim he sought to recover the excess rent he had paid to the plaintiff.

Apart from the question of the payment of rent the facts in this case were hardly in dispute. The premises were built before the war and were therefore controlled premises under the Control of Rent Act. The defendant had bought a half share of the premises in 1951 and the other half share in 1964. From 1952 to December 31, 1971 the ground floor had been let out to his own company named Bee Chuan & Co. at a rent of $90 per month. The first floor was rented out to someone else and on January 29, 1968 the defendant had the first floor decontrolled under section 23 of the Control of Rent Act. The lease of the ground floor which he had given to Bee Chuan & Co. expired on December 31, 1971. Two weeks earlier on December 15, 1971 he sold the premises to the plaintiff and the transfer was registered on December 17, 1971. The plaintiff in turn gave a lease of the ground floor to the defendant for a period of 4 years with effect from January 1, 1972.

On March 8, 1972 the plaintiff obtained a certificate from the Rent Tribunal under section 23 of the Control of Rent Act for the purpose of having the ground floor of the premises decontrolled. A copy of this certificate was served on the same day on Bee Chuan & Co. This certificate was in the following terms: —

"RENT TRIBUNAL FOR THE DISTRICT OF SEREMBAN
CONTROL OF RENT ACT 1966

Application No. PDS R.T. 10 Pt. II (4) of 1972

Between

Tham Kwee Sin alias Tan Kin,
No. 123, Birch Road,
Seremban. - - - - - - Landlord/Applicant

And

Bee Chuan & Co. Sdn. Bhd.,
No. 46 Jalan Tunku Hassan,
Seremban. - - - - - - Tenant/Respondent

CERTIFICATE UNDER SECTION 23

On the application of Madam Tham Kwee Sin, the Landlord/Applicant, through her Solicitors, Messrs Atma Singh Gill & Co., of No. 1 Jalan Tunku Hassan, Seremban, and upon reading the sealed and signed letter dated December 16, 1971 written by the tenant namely, Bee Chuan & Co. Sdn. Bhd. to Gan Khay Beng, the said Applicant's predecessor in title surrendering the tenancy of the ground floor of premises No. 46 Jalan Tunku Hassan, Seremban, of the former's own volition to the latter, from whom the Applicant has purchased the same *IT IS HEREBY CERTIFIED* that the Tenant/Respondent of the said controlled premises namely ground floor of No. 46 Jalan Tunku Hassan, Seremban, has surrendered his tenancy on its own volition and has agreed to hand over vacant possession of the said controlled premises to the Landlord/Applicant *AND* upon the service of a copy of this Certificate on the said Tenant/Respondent as required by section 23(2) of the Control of Rent Act 1966, the premises shall forthwith cease to be controlled premises.

Dated the 8th day of March 1972.

Chairman
Rent Tribunal
For the Districts of Seremban
and Port Dickson,
Seremban."

The plaintiff contended that as from March 8, 1972 the ground floor of the premises was no longer subject to the Control of Rent Act as she had obtained a certificate under section 23 of the Act by reason of the surrender of the tenancy to the landlord. In support of this contention it was submitted that on December 16, 1971 Bee Chuan & Co. passed a resolution whereby the company surrendered the tenancy of the ground floor to the defendant Gan Khay Beng with effect from December 31, 1971. This was apparently done to pave the way for the defendant to sell the

premises to the plaintiff who would in turn give a lease of the ground floor to the defendant for a period of four years and an agreement to this effect dated December 15, 1971 was entered into by the three parties concerned namely the plaintiff, the defendant and Bee Chuan & Co.

At the conclusion of the trial I held that the purported decontrolling of the ground floor of the premises was ineffective because the provisions of section 23 of the Control of Rent Act were not strictly complied with. This section reads as follows: —

"23.(1) In either of the following events, namely —

(a) where the tenancy of any controlled premises, being a tenancy for a fixed period and other than a monthly tenancy, has been determined either by effluxion of time or by any other means whatsoever; or

(b) where the tenant of any controlled premises for any reason whatsoever surrenders his tenancy either on his own volition or is required by law so to do,

the landlord thereof may apply to the Tribunal requiring the latter to issue a certificate stating either or both of the facts referred to in this subsection, and upon the issue of such certificate a copy thereof shall be served on the tenant.

(2) Upon the service on the tenant of a copy of such certificate, the premises concerned shall forthwith cease to be controlled premises and any person holding on after such cessation shall cease to enjoy the benefits and protection which he would otherwise have enjoyed under this Act but for such cessation."

Premises which are subject to the operation of the provisions of the Control of Rent Act, 1966 may cease to be so only by virtue of and in accordance with the provisions of section 23(1)(a) and (b). These provisions must be strictly complied with and failure to do so will render ineffective any attempt at decontrolling of the premises concerned. Upon the happening of either or both the events as stated in section 23(1)(a) and (b) a landlord of any controlled premises may apply to the Rent Tribunal requiring it to certify the occurrence of either or both the events. The Rent Tribunal has no discretion in the issuing of the certificate. It is obliged to issue the certificate on being furnished with satisfactory proof of the identities of the parties and of the occurrence of either or both the events as set out in section 23(1)(a) and (b). After the issue of the certificate a copy thereof has to be served on the tenant and only then will the premises concerned cease to be controlled premises.

In the present case the provisions of section 23 of the Control of Rent Act were not strictly followed. In the first place the certificate of the Rent Tribunal was wrongly issued. The wrong party was named in the certificate as the tenant of the premises. From January 1, 1972 the defendant and not Bee Chuan & Co. was the tenant of the premises. Secondly it was stated in the certificate that Bee Chuan & Co. had on their own volition surrendered their tenancy to the defendant who was the predecessor in title of the plaintiff and consequently it was certified that the tenant "has surrendered his tenancy on its own volition and has agreed to hand over vacant possession of the said controlled premises to the landlord/applicant". This again was irregular. Under section 23(1)(b) of the Control of Rent Act it is the current tenant and not any previous tenant who surrenders his tenancy to the landlord. And the surrender has to be made to the current landlord and not to his predecessor in title. In the present case when the application for the decontrol of the ground floor was made in 1972 the landlord was the plaintiff and her tenant was not Bee Chuan & Co. but the defendant. There is nothing in the certificate nor is there any other evidence to show that the defendant had surrendered his tenancy of the ground floor to the current landlord on his own volition or that he was required by law to do so. Hence the issue of the certificate by the Rent Tribunal was altogether improper.

Under section 23 a copy of the certificate is required to be served on the tenant who in this case ought to have been the defendant. It was however served not on him but on Bee Chuan & Co. who were no longer the tenants of the ground floor as from January 1, 1972. And even if a copy of the certificate had been served on the defendant it would have been of no effect because of the improper issue of the certificate.

In the event I held that the ground floor of the premises remained subject to the provisions of the Control of Rent Act, 1966 so that the defendant who was the tenant of the ground floor could be evicted only in accordance with the provisions of the Control of Rent Act. I accordingly dismissed the plaintiff's claim for possession with costs. However I allowed her a sum of $130 which was due to her by way of quit rent which she had paid as well as a sum of $314 being the balance of arrears of rent for the months of February and April 1972. I also allowed the defendant's counterclaim with costs and ordered the plaintiff to refund the excess rent which the defendant had paid to her.

Claim dismissed; Counterclaim allowed.

Solicitors: *Gill & Tang; Nahappan, Muthu & Peri.*